IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

J U D G M E N T

Arya Samaj IGNP Colony,Lalgarh vs Smt.Mala Sharma & ors.
(1)S.B.Civil Revision No.398 of 2006
Arya Samaj IGNP Colony,Lalgarh vs Smt.Bhoora Ram & ors
(2)S.B.Civil Revision No.399 of 2006
Arya Samaj IGNP Colony,Lalgarh vs Smt.Praveen Kumar & ors
(3)S.B.Civil Revision No.400 of 2006
Arya Samaj IGNP Colony,Lalgarh vs Jagmal Singh & ors
(4)S.B.Civil Revision No.388 of 2006

Date of Judgment :- 27.11.2006

PRESENT
HON'BLE MR.JUSTICE PRAKASH TATIA

Mr.D.D.Chitlangi, counsel for the petitioners.
Mr.Ajay Vyas,counsel for the respondents.
Mr.Shyam Ladrecha, Addl. Govt. Advocate.

BY THE COURT :-

Heard learned counsel for the parties.

By this common order, four revisions are being decided because of the involvement of common question of law in all three revisions.

In the trial court, plaintiff respondent NO.1 in all these revisions filed inter pleader suit under order 35 C.P.C. Where in all 4 plaintiffs pleaded that they took separately some

portion of land from one of the defendant petitioner Arya Samaj, on the condition that the plaintiffs shall construct the shop and the defendant Arya Samaj shall not charge rent from the plaintiff and in case defendant Arya Samaj will pay the cost of the construction to the plaintiff, the plaintiff will pay rent to the Arya Samaj. Admittedly at the time of filing of suit the plaintiffs already started paying rent to the defendant Arya Samaj.

According to the plaint allegations the defendants Executive Engineer 16 Division IGNP Bikaner and the State gave certain notices to the plaintiffs stating that properties are of State and to get regularisation of their construction etc asked plaintiffs otherwise the respondents No.2 and 3 (defendant No.2 and 3) will demolish the construction raised by the plaintiffs. According to plaintiffs, in view of above the plaintiffs are not sure who is owner of the land in question ,and therefore, their interest in property be safeguarded.

The defendant Arya Samaj submitted an application under order 7 rule 11C.P.C. stating therein that plaintiffs admitted in the plaint itself that they are paying rent to the Ara Samaj petitioner and the land in question was taken by the

plaintiffs from the Arya Samaj over which plaintiffs raised construction. In view of above pleadings, the plaintiffs cannot deny the title of the defendant Arya Samaj nor they can dis-own their character as tenant of the defendant Arya Samaj. It is also submitted that in fact plaintiffs in the plaint neither dis-owned title of the plaintiffs over the land in question nor renounced their character as of tenant of the defendant petitioner Arya Samaj, contrary to it in the plaint itself they have admitted that they are paying rent to the defendant Arya Samaj. In such situation the plaintiff's cannot compel the defendants petitioner land lord to get its title decided. In view of the above, suits filed by the plaintiffs are barred under order 35 rule 5 C.P.C.

Learned counsel for the respondent No.1, Plaintiff submitted that the defendant No.2 and 3 since are claiming that they are owner of the land in question and defendant's No.2 and 3are giving threats to the plaintiffs that in case shops are not regularised by the plaintiffs from respondent No.2 and 3, the defendants No.2 and 3 may demolish the construction raised by the plaintiffs. In view of above, a serious dispute has arisen between the defendant Arya Samaj and the State and State functionaries, with respect to title as well as rights to

receive rent from plaintiffs. Therefore, till the title of the property in dispute is decided, the plaintiff's right are required to be protected the defendant be restrained from interfering in the possession of the plaintiffs and till then no rent may allowed to be recovered.

Learned counsel appearing for respondent No.2 and 3 State submitted that the property belongs to the State and therefore, State is entitled to take proper legal action against persons in occupation and the petitioner Arya Samaj had no right to let out the property.

I have considered the submissions of the learned counsel for the parties.

It is clear from the Rule (1) of Order 35 that inter pleader suit can be filed with specific statement in the plaint that :

(i) that the plaintiff claims no interest in the subject matter in dispute other than for charges or costs ;

(ii)the claims made by the defendants severally; and

(iii) that there is no collusion between the plaintiff

and any of the defendants and any other.

Rule 5 of Order 35 is as under :-

> 5.**Agents and tenants may not institute interpleader suits.-**Nothing in this Order shall be deemed to enable agents to sue their principals, or tenants or sue their landlords,for the purpose of compelling them to interplead with any persons other than persons making claim through such principals or landlords.

It is clear from the plaint allegations that plaintiffs in these three suits stated that they took the possession from the defendant No.1 petitioner and are paying rent to the defendant Arya Samaj. If any third party is challenging the title of the land lord, tenant cannot maintain inter pleader suit so as to compel the land lord to interplead with any person who may be claiming their independent right in the let out property against the interest of the plaintiff's landlord. In the present case the defendant No.2 and 3 are not claiming any claim through land lord who let out the premises to the plaintiffs. In view of the above, the suits filed by the plaintiffs respondent No.1 is barred by law as per sub-rule (5) of order 35 of the C.P.C. Trail Court committed error of law in rejecting the application of defendant petitioner filed under order 7 rule 11 C.P.C.

If the plaintiffs think that they are in occupation of

the property and have right or interest in the property then they are free to protect their rights and interest in the property by filing appropriate civil suit but on this count they cannot compel their land lord to fight out for his title against third person.

In view of above, these four revision petitions deserves to be allowed, hence, allowed. Orders of the trial Court dated 13th July 2006 are set aside and application filed by the petitioner under order 7 rule 11 C.P.C. is allowed. The plaint is rejected as barred by law.

(**PRAKASH TATIA)J.**

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